

Remarks:

In the October 23, 2003, Office Action, the drawings were objected to under 37 C.F.R. Section 1.84(p)(4) due to the use of the reference numeral "19" to refer both to a "fin structure" and to an "outer surface."

On the merits, Claims 117-120, 123-127, 131, 132, and 145 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Kraus in view of Branson. Claims 128-130, 133, and 134 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Kraus in view of Branson and Hayashi et al. Claims 121, 122, 135, and 136 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Kraus in view of Branson and May. Claims 117-120, 123-127, 131, 132, 137, and 145 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Stolmeier in view of Kraus. Claims 128-130, 133, and 134 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Stolmeier in view of Kraus and Hayashi et al. Claims 121 and 122 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Stolmeier in view of Kraus and May. Claims 135 and 136 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Stolmeier in view of Kraus and May.

Figs. 3 and 45 have proposed changes in red to eliminate the use of the reference numeral "19" to refer to two different components which are being submitted for the Examiner's review. In the specification, paragraphs [0123] and [0171] are also being amended to make the corresponding changes in the specification. Applicants appreciate the thorough review by the Examiner and his notation of this error.

Claims 1-116, Claims 138-144, and Claims 146-186, which claims were previously withdrawn, in view of a restriction requirement, have been formally cancelled. Applicants have revised Claims 117-137 and 145, and have added new dependent Claims 187-190 and new independent Claim 191. The revisions to independent Claims 117, 137, and 145 are intended to more particularly focus on the patentable aspects of the present invention, which differs substantially from the prior art, both the prior art which has been cited by the Examiner in the October 23, 2003, Office Action and all other prior art known to Applicants.

Applicants regard as their invention a reclosable bag made of a sheet of web material which forms the sides, the bottom, and the tear-off portion of the reclosable bag which is used to provide a tamper-evident seal. In Applicants' invention, after the tear-off portion is removed, the reclosable fastener extends above the remaining web material. Without exception, each relevant piece of prior art cited by the Examiner forms the tear-off portion from an additional piece of material which must be fastened to the reclosable bag. Thus, Applicants design is elegant in its simplicity, and represents the state-of-the-art in reclosable bags designed for food storage. Applicants' design is also a side-filled bag, and includes a gusseted bottom.

The prior art cited by the Examiner is not believed to teach or suggest the invention as presently claimed. Three primary references have been cited by the Examiner, with two other references being used to teach aspects of the dependent claims. Of the three primary references cited, the least pertinent is the Kraus reference, which

does not teach a reclosable bag. Instead, the Kraus reference teaches a tube, which is not remotely close to a bag. Indeed, the Kraus device is stated to be made by extrusion, and is not a bag at all. Kraus does not teach any type of tamper-evident mechanism, and is a tube and not a bag. Kraus has only a single opening, at the top of the tube. The Kraus device is clearly unusable to store food in, and teaches nothing more than a reclosable tube. Combining a tube with a bag would make no sense to one skilled in the art.

Branson teaches a reclosable tamper-evident bag which differs from the present invention in a number of respects when considered in combination with the Kraus reference (Kraus and Branson are used as the basis for the first three of the seven grounds of rejection made by the Examiner in the October 23, 2003, Office Action). First, while Kraus includes no tamper-evident mechanism, Branson does, but the mechanism is a separate member, namely the web 50. As such, the combination of Kraus and Branson fails to teach the claimed limitation that the reclosable bag of the present invention has the side panels and the hood or fold structure made of the web material.

Additionally, the Kraus tube may only be filled from the top and the Branson bag may only be filled from the bottom (see the specification of Branson, which clearly indicates that all embodiments of Branson are bottom-filled, including the embodiment shown in Figs. 1 and 2). The present invention also includes a gusseted portion at the bottom, which is not shown in either Kraus or Branson; a gusseted bottom bag cannot be filled from the bottom as the Branson bag is, making the Branson reference even more inapplicable. Finally, the present invention as claimed is clearly a side-fill bag, and since

nether Kraus nor Branson teach such construction, it is apparent that this is an additional distinction of the present invention over the combination of Kraus and Branson.

Accordingly, Applicants' invention as presently claimed is clearly patentable over the combination of Kraus and Branson.

Stolmeier et al. teaches a reclosable tamper-evident bag which differs from the present invention in a number of respects when considered in combination with the Kraus reference (Stolmeier et al. and Kraus are used as the basis for the last four of the seven grounds of rejection made by the Examiner in the October 23, 2003, Office Action). While Kraus includes no tamper-evident mechanism, Stolmeier et al. does, but the mechanism is again a separate member, namely the tamper evident sheet 60. As such, the combination of Stolmeier et al. and Kraus fails to teach the claimed limitation that the reclosable bag of the present invention has the side panels and the hood or fold structure made of the same web material.

Again, the Kraus tube may only be filled from the top and the Stolmeier et al. bag may be filled from the top or from bottom (see the specification of Stolmeier et al., which indicates that the bag may be bottom filled if made of two halves, with the only other way to fill it being from the top, an inadvisable method due to the likelihood of getting food onto the closure mechanism). While Stolmeier et al. does show a gusseted bag, it appears that it must be filled from the top, again making the Stolmeier et al. reference inapplicable. Since the present invention as claimed is clearly a side-fill bag, and since nether Kraus nor Branson teach such construction, it is apparent that this is an additional

distinction of the present invention over the combination of Stolmeier et al. and Kraus.

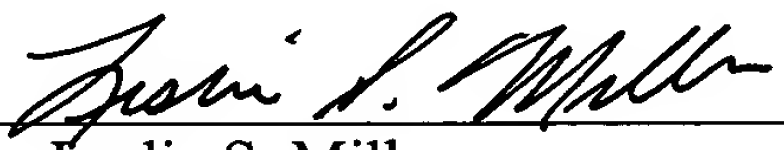
Accordingly, Applicants' invention as presently claimed is clearly patentable over the combination of Stolmeier et al. and Kraus.

In view of the patentably distinguishing features of Applicants' invention as presently claimed in the independent claims to which the four references discussed above were the only cited prior art, it is believed that there is no need to discuss the other two cited references, which are only cited against the dependent claims. In addition, in view of the patentably distinguishing features of Applicants' invention as presently claimed, there is little need for additional arguments against the combination rejections made by the Examiner. Applicants do, however, wish to point out for the record that they believe that the Examiner has used a hindsight-based obviousness test in all seven of the § 103 rejections which has been repeatedly rejected by the Federal Circuit (as well as the Board of Patent Appeals and Interferences). The proper analysis is whether there is something in one of the prior art references which are being combined which suggests the combination, and in none of the seven § 103 rejections did the Examiner point out such a teaching or suggestion supporting the combination. Rather, the Examiner's justification for the combination is to assert that one skilled in the art would just do it: generically stated, that it would be obvious to modify [Reference 1] and include [teaching from Reference 2] because [Reference 2] teaches [teaching from Reference 2]. This is little more than using Applicants' invention as a pattern for a jigsaw puzzle and finding pieces

from multiple unrelated references. For this additional reason, the rejections of the independent claims are believed to be untenable.

Applicants believe that the Claims 117-137, 145, as amended, and new Claims 187-191 are patentable at this time. Accordingly, these claims remain pending following entry of this Amendment, and are in condition for allowance at this time. As such, Applicants respectfully request entry of the present Amendment and reconsideration of the application, with an early and favorable decision being solicited. Should the Examiner believe that the prosecution of the application could be expedited, the Examiner is requested to call Applicants' undersigned attorney at the number listed below.

Respectfully submitted:

BY 
Leslie S. Miller
Attorney for Applicants
Registration No. 30,662

Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Suite 2100
Milwaukee, WI 53202
(414) 298-8321

Customer No. 22922